

Shiv Kumar Vs State Govt. of NCT of Delhi and Another

Court: Delhi High Court

Date of Decision: Jan. 10, 2012

Acts Referred: Penal Code, 1860 (IPC) " Section 120B, 143, 147, 199, 200
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 " Section 3, 3(1), 3(2)

Hon'ble Judges: Suresh Kait, J

Bench: Single Bench

Advocate: Sunita Bhardwaj, for the Appellant; Rajdipa Behura, APP for State/R-1 and Mr. Bal Anand, Younger brother of R-2, for the Respondent

Final Decision: Dismissed

Judgement

Suresh Kait, J.

The instant petition was first enlisted on 27.5.2011 and notice was issued. Vide the even date, the proceedings before the

trial court were also stayed. It is noted that on 11.8.2011, the notice were already served on respondent No.2, however, respondent No.2

preferred not to appear in the Court on 23.9.2011.

2. On 9.12.2011, the following order was passed:

1. Petitioner has assailed the order dated 02.05.2011, whereby Id. M.M. has recorded that the complainant has alleged that offence u/s

120B/143/147/199/ 200/205/323/341/352/419/506/34 Indian Penal Code, 1860 and 3(1) ix, x and 3 (2) vii of Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act has been committed.

2. Id. M.M. has also recorded that as far as the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is

concerned three ingredients should be fulfilled:

(i) A person making the alleged derogatory utterances must have the person whom he intentionally insulting, intimidates with intention to humiliate

was a member of SC/ST.

(ii) Such intentions, insult, intimidation or humiliation must be directed against and made to a member of SC/ST and for being member of SC/ST.

(iii) The utterances must be made at any public place within public view

3. Therefore, Id. Trial Judge issued summons dated 05.02.2011 against the petitioner also. Id. Counsel further submits that Id. Metropolitan

Magistrate has wrongly passed the order and issued summon against the petitioner as firstly, the provision of Scheduled Caste and Scheduled

Tribe Atrocities Act are not applicable because of the fact that petitioner himself belongs to Scheduled Caste. Therefore, u/s 3, the offence if

committed by other than Scheduled Caste, the process can be issued against him.

4. Secondly, Id. Counsel has pointed out that enquiry has been conducted by Assistant Commissioner of Police and he has recorded in his enquiry

that MLC results of Suresh Kumar Ranga, Respondent no. 2 and Rajendera Jain shows no injury marks and MLC results of Jai Rattan could not

be available as he had not supplied his treatment documents to IO. Relying on the submission of the witnesses, the said Assistant Commissioner of

Police filed his report that no ground to take cognizance u/s 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Id. Counsel has pointed that offences under the said Act are also not different against the petitioner as respondent no. 2 is habitual complainant

and earlier also vide order dated 05.07.2006 in CrI. M.C.1538/2004 proceedings of the FIR NO. 240/2002, under Sections 324/326, 506 (II)

Indian Penal Code, 1860 read with Section 3 (1) (ii) , (x) and 3 (2) (vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act, 1989 registered with Police Station-Parliament Street, New Delhi as well as the summoning order dated 12.05.2004 issued by Id. MM was

quashed.

6. Id. Counsel further submits that in the instant case when any action was not taken by the police, respondent no. 2 approached this court for the

direction to lodge the FIR and action thereof. Vide order dated 02.12.2005, this court directed to inquire the complaint and if required, register the

case and action be taken in accordance with law which is as under:-

Having regard to these facts and circumstances, it is directed that the complaint of the petitioner shall be looked into by an officer not below the

rank of Assistant Commissioner of Police and if the commission of offence under the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989, or any other law is found to have been committed, the FIR will be registered and action taken in accordance with law.

7. Thereafter, matter was enquired by the ACP of Sub-division, Greater Kailash District, who filed the report as discussed above. The same was

not accepted by the Trial Judge and the summons in question issued u/s 323/341 Indian Penal Code, 1860 apart from the provisions of Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, against the petitioner also.

8. Ld. Counsel has drawn the attention of this court to the enquiry being conducted by the Assistant Commissioner of Police, wherein he has

recorded as under:-

I have also re-examined Sh. Lallan Singh, the then Asstt. Labour Commissioner, who was conducting the proceedings in his office on 10.06.2005.

He stated that there was no manhandling or use of castiest words during the proceedings. Only verbal exchange of words was taken place there. I

also examined K. Rama Chandran Diwan, Singh, Nand Kishore Suresh Kumar, Jai Prakash etc. As per their statement no castiest words were

used against Suresh Ranga and others.

9. Therefore, he submits that the impugned order issued by Id. MM is without application of mind and the said judge has not taken this report into

account.

10. The trial court has recorded in the impugned order that in pursuance of the direction of the High Court, enquiry was also conducted by

Commissioner of Police, who recorded therein that the present dispute is between two groups of CONCOR India Labour Union regarding the

representation of office bearers on one side and Anil and Others on the other side. Suresh Kumar Ranga is not associated with CONCOR India

Ltd. and as per the statements of the public witnesses present at the time of evidence, no cognizable offence was committed.

11. Ld. Counsel has also submitted that complainant has alleged that offence u/s 120B/143/147/ 199/200/205/323/341/352/419/506/34 Indian

Penal Code, 1860 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been committed by all alleged accused

persons; whereas the summons were issued only against the Umesh Sharma and respondent no.2 Shiv Kumar/petitioner u/s 323/341 Indian Penal

Code, 1860 and 3 (i) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

12. I note that vide order dated 27.05.2011, proceedings before the trial court was stayed. Though, respondent no. 2 has been served, inspite of

that he preferred not to appear in Court.

13. In the interest of justice one more opportunity is given to respondent No.2.

14. Re-notify on 21.12.2011.

3. The instant petition was again taken on 21.12.2011. Mr. Suresh Kumar Ranga/respondent No.2 appeared in person and has raised the issue

that he did not receive legible copy of the paper book. The petitioner was directed to supply the paper book within three days. Copy thereof has

been supplied by the petitioner. Thereafter the matter was listed for today.

4. Mr. Bal Anand, younger brother of respondent No.2 Suresh Kumar Ranga has appeared in the Court and submits that some one has expired in

the relation of advocate of respondent No.2, therefore, he is unable to come in the Court today and has sent him to inform the Court and take

adjournment.

5. I have checked the ""B"" part of the judicial file where there is no vakalatnama filed by any advocate engaged by respondent No.2. Therefore, I

am of the view that respondent No.2 is interested in delaying the matter. As he firstly did not appear and now he is attempting the other routine

work and has not preferred to appear before this Court.

6. Though today's date was fixed with the consent of both parties, since respondent No.2 has preferred not to appear either in person or through

advocate, therefore, under the compelling circumstances, I am passing the order in his absence.

7. The main issue in the present petition is that the petitioners belong to Scheduled Caste community. He cannot be charged under Sections 3(1) ix

, x and 3(2) vii of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

8. As noted above, there was no injury as per the MLC on respondent No.2 and as per the status report having being filed by the police before

the trial court, no injury was caused on respondent No.2. Therefore, in the circumstances, the summoning order date 02.05.2011 is set aside and

the petitioner is discharged from all the charges under Sections 323/341 Indian Penal Code, 1860 read with Section 3(1) ix , x and 3(2) vii of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Criminal M.C. No. 1798/2011 is allowed.

Crl. M.A. No. 6456/2011 (Stay)

The interim order passed is vacated and the application is dismissed as infructuous.